

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

<p>In re,</p> <p>MERENDON MINING (Nevada), INC. a/k/a Milo Brost,</p> <p>Debtor.</p> <hr/> <p>MARCIA DUNN, Chapter 7 Trustee,</p> <p>Plaintiff,</p> <p>v.</p> <p>NORMAN R. FRANK, JAMESTOWN DEVELOPMENT CO., LLC, A COLORADO LIMITED LIABILITY COMPANY, WORLDWIDE RENTAL SERVICES, INC. A/K/A WORLDWIDE MACHINERY, INC., GERALYNN T. GRIEVE, LAWRENCE HITTLE, MARTIN WERNER, LESLIE G. TAYLOR, PAUL GARFINKLE, STATE OF COLORADO DEPARTMENT OF NATURAL RESOURCES, DIVISION OF MINERALS AND GEOLOGY, BOULDER COUNTY, COLORADO, BY AND THROUGH ITS TAX COLLECTOR, HILLARY HALL, CLERK OF COURT, BOULDER COUNTY, COLORADO, CLAIMANTS OF MERENDON MINING (Nevada), INC. WHO FILED SECURED CLAIMS, LEFT HAND DITCH COMPANY, JOHN DOE NOS. 1 THROUGH 1,000, THE NAMES BEING FICTITIOUS AND NOT PRESENTLY KNOWN TO THE PLAINTIFF,</p> <p>Defendants.</p>	<p>Case No. 09-11958-BKC-AJC</p> <p>Chapter 7</p> <p>Adv. Proc. No. 10-03623 AJC</p>
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**SECOND AMENDED ADVERSARY COMPLAINT FOR A DECLARATORY  
JUDGMENT TO DETERMINE THE VALIDITY, EXTENT, AND PRIORITY OF  
ANY LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS IN THE BUENO AND  
BLACK ROSE MINING PROPERTIES LOCATED IN BOULDER COUNTY,  
COLORADO, INCLUDING THE INTERESTS OF ANYONE LAYING CLAIM TO  
THE ESTATE'S RIGHTS AND INTERESTS IN SUCH PROPERTIES, PURSUANT  
TO 11 U.S.C. §363(p)(2) AND RULE 7001(2), FED. R. BANKR. P.**

Plaintiff, Marcia Dunn, as the Chapter 7 Trustee for the substantively consolidated Estate of the Debtor, Merendon Mining (Nevada), Inc., by and through her undersigned counsel, files this Amended Adversary Complaint to Determine the Validity, Extent, and Priority of any Liens, Claims, Encumbrances, and Interests in the Bueno and Black Rose Mining Properties located in Boulder County, Colorado, Including the Interests of Anyone Laying Claim to the Estate's Rights and Interests in Such Properties Pursuant to 11 U.S.C. §363(p)(2) and Rule 7001(2), Fed. R. Bankr. P., and in support thereof states as follows,

**JURISDICTION AND VENUE**

1. This Adversary Proceeding is brought pursuant to Bankruptcy Rule 7001 (2) seeking an order, judgment and decree from this Court determining the validity, priority, and extent of any liens, claims, encumbrances, and interests, including any interests of anyone laying claim to the estate's rights and interests in the mining properties generally known as the Bueno and Black Rose mines located in Boulder County, Colorado.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §1334(b) and the standing Order of Reference to the Bankruptcy Court in the Southern District of Florida, entered by the United States District Court Southern District of Florida, pursuant to 28 U.S.C. §157(a). Subject matter jurisdiction exists pursuant to 28 U.S.C. §157(b) as

a case under title 11 and a core proceedings arising under title 11, or arising in a case under title 11 in accordance with 28 U.S.C. §157(b)(2).

3. Venue of the case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **PROCEDURAL BACKGROUND**

4. On February 4, 2009, Petitioning Creditors Eileen McCabe, Jane L. Otto, and Diane Kaplan-Berk filed a Chapter 7 Involuntary Petition in the Southern District of Florida against the Debtor, Merendon Mining (Nevada), Inc., a Nevada corporation, whose principal place of business was in Miami-Dade County, and on June 9, 2009, this court entered an Order for Relief (D.E. #29 in the main case<sup>1</sup>).

5. On June 10, 2009, Marcia Dunn was appointed as the Chapter 7 Trustee (“Trustee”) (D.E. #30 in the main case.)

6. On December 15, 2009, the Trustee commenced Adversary Proceeding No. 09-02518-AJC (the “First Adversary Case”) (D.E. #65 in the main case, D.E. #1 in the First Adversary Case) against, (a) Merendon Mining (Colorado), Inc., a Colorado corporation, (b) Merendon Mining (Arizona), Inc., a Nevada corporation, (c) Merendon Mining (California), Inc., a Nevada corporation, (d) True North Productions, LLC, a Nevada corporation, and (e) Sentinel Mining Corporation, a Colorado corporation (collectively, the “U.S. Merendon Mining Entities”), requesting this Court, in relevant part, to,

- a. pierce the corporate veil of U.S. Merendon Mining Entities pursuant to 11 U.S.C. §544(b) and applicable state common law, and
- b. declare, pursuant to applicable state and federal law, that the assets

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<sup>1</sup> In re, *Merendon Mining (Nevada), Inc.*, Case No. 09-11958-BKC-AJC Chapter 7

of U.S. Merendon Mining Entities, including, but not limited to the following assets, are property of the Debtor's estate pursuant to 11 U.S.C. §541, and must be turned over to the Trustee pursuant to 11 U.S.C. §542.

i. title to Black Rose Mine, Jamestown, Boulder County, Colorado,

ii. title to Bueno Mine, Jamestown, Boulder County, Colorado, (together, the "Beuno and Black Rose Mines"),

iii. title to the mineral, gas and oil rights associated with the Bueno and Black Rose Mines,

iv. title to the equipment and inventory associated with the Bueno and Black Rose Mines, and

v. title to the gold and finished gold products associated with the Bueno and Black Rose Mines (collectively, the estate's interest in the Bueno and Black Rose Mines, including all mining claims and patents, and the property contained in (iv)-(vi) above that are located on-site at each mine shall be referred to in this Sale Motion as the "Bueno and Black Rose Mining Properties").

The legal descriptions for the Bueno and Black Rose Mines were attached to the complaint in the First Adversary case as part of Exhibit C (D.E. #1 in the First Adversary Case), and also attached as part of Exhibit A to the the original complaint filed on September 29, 2010 (D.E. 1).

7. On December 18, 2009, the Trustee filed a Motion for Substantive Consolidation of Non-Debtor Entities (the "Subcon Motion"), including the U.S.

Merendon Mining Entities (D.E. #70 in the main case, D.E. #8 in the First Adversary Case).

8. On December 28, 2009, the U.S. Merendon Mining Entities were served at their respective businesses or registered agents' addresses, with a summons (D.E. #4 in the First Adversary Case) and a copy of the First Adversary Case, the Subcon Motion, including the exhibits to each, and this Court's Pretrial Order issued in this matter (D.E. #5 in the First Adversary Case ) (D.E. #9, D.E. #12, D.E. #13-3, pgs. 19-22, 39-42, 45 and 46 in the main case).

9. On January 27, 2010, this Court entered an Order (the "Subcon Order") substantively consolidating, among other non-debtor entities, the U.S. Merendon Mining Entities, *nunc pro tunc*, to the Petition Date (D.E. #84 in the main case, D.E. #20 in the First Adversary Case).

10. On February 10, 2010, the Trustee filed a Motion for Partial Summary Judgment against the U.S. Merendon Mining Entities, for, in relevant part, the relief requested in ¶6 above (D.E. #27 in the First Adversary Case).

11. On February 19, 2010, this court entered an Order setting a hearing on the Trustee's Motion for Partial Summary Judgment for March 11, 2010, and setting the deadline for filing objections by affidavit or memorandum for March 9, 2010 (D.E. #47 in the First Adversary Case), and on February 22, 2010, the Trustee filed and served a Notice Regarding Opposing Motions for Summary Judgment to the non-debtor defendant entities, including the U.S. Merendon Mining Entities. (D.E. #48 in the First Adversary Case). No opposition to the Motion for Summary Judgment was filed with this Court or served upon the Trustee.

12. On March 11, 2010, the Court entered an Order granting Partial Summary Judgment in favor of the Trustee (D.E. #62 in the First Adversary Case) (the “Judgment”)—in part—piercing the corporate veil of the U.S. Merendon Mining Entities, determining that the Bueno and Black Rose Mining Properties are property of the Debtor’s estate, substantively consolidating the Bueno and Black Rose Mining Properties into the Debtor’s estate, extending the automatic stay over the Bueno and Black Rose Mining Properties, and providing that all persons or entities claiming an interest, by way of ownership or lien, in any of the Bueno and Black Rose Mining Properties, may file a claim or adversary proceeding, as appropriate in the Bankruptcy Case.

13. The Bueno and Black Rose Mining Properties also include any additional property contained in any deeds in the name of any of the U.S. Merendon Mining Entities in Boulder, Colorado, including,

a. The deed that makes up the Black Rose Mine (the “Black Rose Deed,” (D.E. #1.2),

i. Warranty Deed dated December 29, 2004 from Norman R. Frank to Merendon Mining (Colorado), Inc., a Colorado corporation, recorded on January 20, 2005 in Boulder County, Colorado (Doc. No. 2659379).

b. The deed that makes up the Bueno Mine (the “Bueno Mine Deeds”), (D.E. # 1.3),

i. Warranty Deed dated December 29, 2004, from Jamestown Development Co., LLC, a Colorado Limited Liability Company, to Merendon Mining (Colorado) Inc. recorded on January 20, 2005 in

Boulder County, Colorado (Doc. No. 265396),

14. On March 12, 2010, the Trustee posted the Judgment to <http://gray-robinson.com/news.php?ACTION=view&CAT=1&ID=1475> in accordance with the Court's Order of December 30, 2009 (D.E. #74 in the main case) (D.E. #63 in the First Adversary Case).

15. On April 2, 2010, the Subcon Order and the Judgment were recorded in Boulder County, Colorado—the Subcon Order was recorded on March 4, 2010 (No. 03061827 and No. 03061908) and the Judgment was recorded on March 31, 2010 (No. 03066736).

16. On October 5, 2011, the Court entered an Order approving the sale of the Bueno and Black Rose Mining Properties (D.E. 284 in the main case).

**THE U.S. MERENDON MINING ENTITIES USED INVESTOR MONIES TO PURCHASE THE COLORADO MINING PROPERTIES**

17. The Debtor and the substantively consolidated non-debtor entities, including the U.S. Merendon Mining Entities, operated a Ponzi scheme, wherein investor monies are directly traceable to the purchase the Bueno and Black Rose Mining Properties. In order to fully grasp the magnitude of the Ponzi scheme, the Trustee incorporates the complaint from the First Adversary Case, including the Affidavit of Paul Garfinkle, (D.E. #65 and #66, Ex. A, D.E. # 1 and #3, Ex. A, in the first First Adversary Case) and the Affidavit of Barry Mukamal dated September 18, 2009 (D.E. #65 and 66, Ex. B, D.E. #1 and #3, Ex. B. in the Adversary Case) (“Mukamal Affidavit), and the Subcon Order. What follows is a brief summary of the history of Merendon Mining in the United States as it relates to the Bueno and Black Rose Mining Properties.

18. In 2002, one the originators of the Ponzi scheme, Milo Brost (“Brost”)

began the process of bringing Merendon Mining to the United States. It was around this time that Paul Garfinkle (“Garfinkle”) was introduced to Brost at one of Brost’s financial workshops held in Fort Lauderdale, Florida.

19. At the time he met Brost, Garfinkle held a Power of Attorney over some gold mining properties in Colorado, and had a gold mining opportunity here in the United States. They began to discuss Brost possibly acquiring those assets for some of his programs, through his Merendon Mining investment vehicles. Brost wanted to see some of the reports and paperwork on these opportunities, so Garfinkle sent Brost geologist reports and information concerning the mining opportunity, maps and other supporting documentation. The name of the mine was The Glory Hole, also known as Chain-O-Mines, located outside of Denver in Central City (Boulder County), Colorado (previously referred to as the “Glory Hole Mine”). Garfinkle presented the Glory Hole Mine to Brost as an opportunity for the Merendon Mining enterprise to acquire an interest for the benefit of their investors.

20. Upon reviewing the information on the Glory Hole Mine, Brost wanted to acquire the mine for Merendon Mining, and said he would fund the litigation as well as the ongoing operations. Brost did not explain how he was going to fund the litigation and operations of the Glory Hole Mine, except that Sorenson and his investment group, through one of their Merendon Mining investment vehicles, would fund the litigation and thereafter develop the mine. Brost and Sorenson used monies that they raised from investors to fund the litigation with regard to the Glory Hole Mine and to subsequently acquire the Black Rose Mine and Bueno Mine. In particular, the monies used to acquire the Colorado Mining Entities came from the investors of what eventually turned into the



Debtor, Merendon Mining (Nevada), Inc.

21. Certain patents from the Glory Hole Mine were later transferred into the name of Sentinel Mining Corporation (“Sentinel”), for which Brost served as an officer and director, and Garfinkle was the registered agent.

22. The first Merendon Mining company in the United States, Merendon Mining (Nevada), Inc., the Debtor, was formed in Nevada on December 30, 2002, to begin to develop the Glory Hole Mine and other mining opportunities. However, there were other existing or ongoing companies which were all part and parcel in the overall Merendon Mining, Brost and Sorenson operation. The purpose of the initial U.S. Merendon Mining company was to take over the Glory Hole Mine.

23. The Debtor was the first of several interconnected and intertwined Merendon Mining corporate entities established in the U.S. for the purposes of acquiring interests in gold mines and operations in America.

24. The Debtor was intended to be the holding company for all the U.S. Merendon Mining acquisitions. Brost and Sorensen acted together as sort of co-chief financial and co-chief operating officers, and in such capacity they controlled this and all the other Merendon Mining operations, both in the U.S. and abroad. The two of them were the singular active participants, the directors and the parties in complete control over all of these interconnected and related entities’ affairs. All of the properties and companies were under the direct and strict control and supervision of Brost and Sorenson, who along with members of both their families held their interests through closely held partnerships.

25. Brost formed Merendon Mining (Colorado), Inc. on November 5, 2003 in

the State of Colorado. Subsequently, Merendon Mining (Colorado), Inc. was to merge into and become part of Debtor. On October 5, 2004, amended and restated Articles of Incorporation were filed with the Nevada Secretary of State changing the name of the Debtor, Merendon Mining (Nevada), Inc. to Merendon Mining (Colorado), Inc., a Nevada corporation. Thus, the Debtor, Merendon Mining (Nevada), Inc. n/k/a Merendon Mining (Colorado), Inc., a Nevada corporation, and Merendon Mining (Colorado), Inc., a Colorado corporation, have identical names, and were intended to be one and the same entity.

26. Brost maintained bank accounts at US Bank in Colorado, and all of the investor monies were initially deposited into those accounts. The funds to acquire each of the Bueno and Black Rose Mines for the Merendon Mining companies came through US Bank in Boulder, Colorado under the Debtor, Merendon Mining (Nevada), Inc. n/k/a Merendon Mining (Colorado), Inc., a Nevada corporation. Investor funds were deposited, commingled and used to pay a variety of expenses for each of the separate mines owned or to be acquired by each of the separate companies. All the Merendon Mining entities were created as part of Brost's scheme to defraud investors, and were to be operated as a single entity under the Debtor as the umbrella corporation, with the goal of acquiring mining properties, putting them into operation, getting the gold concentrate, and then sending the gold to Sorensen in Honduras for processing by Merendon Honduras, the refinery owned by Sorenson, where the smelting and manufacturing of the gold would take place.

27. The Debtor, under different corporate umbrellas, acquired the various mining operations. There are four American based Merendon Mining companies, (a)

Debtor, Merendon Mining (Nevada) n/k/a Merendon Mining (Colorado), Inc., a Nevada corporation, (b) Merendon Mining (Colorado), Inc., a Colorado corporation, (c) Merendon Mining (Arizona), Inc., a Nevada corporation, and (d) Merendon Mining (California), Inc., a Nevada corporation, (previously referred to as the “U.S. Merendon Mining Entities”). Each of the companies had interests in, acquired, or had contracts to buy various mining properties within the United States.

28. The Bueno and Black Rose Mining Properties were purchased with investor money, raised through the Debtor’s investment vehicle, The Institute for Financial Learning Group of Companies, Inc., placed in the Debtor’s accounts at US Bank in Colorado, and contracted for by the Debtor, notwithstanding what corporate entity ultimately acquired title to the mines. The “Bueno” and “Black Rose” mining properties located in Jamestown, Colorado, were purchased in the name of Merendon Mining (Colorado).

29. While the individuals who physically worked at a particular mine would work solely for that mine and rarely visit or perform work for or at other mines, all of the U.S. Merendon Mining Entities had the same corporate employees, all of whom served the same role and function no matter which entity for which they were performing a particular task. Les Taylor (“Taylor”), an individual who had previously worked with Sorenson in his other operations, came to work as Director of Mining Operations for all the Merendon Mining companies, particularly the U.S. Merendon Mining Entities.

30. Sorenson and Brost had created Merendon Mining, and the U.S. Merendon Mining Entities were all a part of this large worldwide complex run under the Merendon or Merendon Mining name, whether it was in Canada, the United States, or

Central and South America.

31. Brost and Sorenson would form a separate corporation for each of their entities as needed, without a clear delineation from company to company as Brost and Sorenson treated and ran all of the companies as one and the same enterprise to defraud the investors.

32. There were regular meetings, mine tours, and seminars for investors. At each of these seminars, the investors were told that they would be getting a return on their investment, and that their investments were all backed by gold possessed by Sorenson. However, the investors were never advised as to how or in which Merendon Mining entity the funds were being invested. Brost and Sorenson treated this all as one Merendon Mining Enterprise (the "Merendon Mining Enterprise") whether it was Canada, the United States, Central or South America, and it was all treated, and presented to the investors, as one and the same Merendon Mining Enterprise.

33. The investors were not given a choice as to which Merendon Mining entity they wanted their money invested. There was no delineation between the four companies - it was all "Merendon Mining." When an investor went to an IFFL meeting, he or she would be solicited to invest in "Merendon Mining," without any distinction between Merendon Mining (Colorado), Merendon Mining (Nevada), Merendon Mining (Arizona), or Merendon Mining (California). Rather, the investor was sold on the singular Merendon Mining enterprise, operated as an umbrella through the Debtor, encompassing the entire American, Canadian and Honduras companies and their operations, along with other related entities controlled by Brost and Sorenson.

34. There were no oral or written representations or documentation advising

any of the investors that their money was being invested in one Merendon Mining entity over another, or otherwise explaining to the investor that their money was being invested to acquire a specific mine. Funds were raised solely from investors with no investment from the principals. Expenses for the mines were paid without discrimination as to which mine was owned by which company. Whether it was the cost to maintain any particular property, to hire a geologist, or retain an attorney for a closing, the principals dipped into the one source of money maintained in the US Bank accounts comprising the monies raised from the investors, regardless of its source, or which company or mine for whose benefit the expenditure was to be made.

35. There were no separate books and records for the Debtor, Merendon Mining (Colorado), Merendon Mining (Arizona), or Merendon Mining (California). The Merendon Mining corporate insiders completely and routinely disregarded the corporate formalities. A review of the Debtor and its affiliates' bank statements and other financial documentation similarly reflects the commingling of investor money, and through this documentation, the Trustee has been able to trace the investor monies into the Bueno and Black Rose Mining Properties.

**DEFENDANTS WHO MAY HAVE A LIEN, CLAIM, ENCUMBRANCE OR  
OTHER INTEREST IN ONE OR MORE COLORADO MINING PROPERTIES**

36. Defendant, Norman R. Frank ("Frank"), is an individual who claims an ownership interest in equipment at the Bueno Mine, but has not provided any evidence of ownership of such equipment. A letter attaching a list of the equipment was attached as Exhibit E to the original complaint (D.E. #1.6). Mr. Frank submitted to the Trustee additional documents that were attached as Composite Exhibit A to the first amended complaint (D.E. 8).

37. Defendant, Jamestown Development Co., LLC, is a Colorado limited liability company which may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

38. Defendant, Worldwide Rental Services, Inc., a/k/a Worldwide Machinery, Inc., is a Colorado corporation which asserts a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

39. Defendant, Geralynn T. Grieve, is a Colorado resident who may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties. In Boulder County, Colorado, there is a Warranty Deed dated April 28, 2006, from Merendon Mining (Colorado) Inc., a Colorado corporation, to Geralynn T. Grieve, recorded on May 10, 2006 (Doc. No. 2775630), which omits the legal description of the property. An Affidavit recorded on May 23, 2010 in Boulder County, Colorado attached a legal description for the Warranty Deed, which is Parcel I of the Bueno Mine. *See* D.E. 1.7 in the original complaint.

40. Defendant, the State of Colorado Department of Natural Resources, Division of Minerals and Geology, may assert a claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

41. Defendant, Boulder County, by and through its tax collector, may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

42. Defendant, Hillary Hall, as Clerk of the Court for Boulder County, Colorado, as recorders of deeds and other conveyances, may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

43. Defendant, Martin Werner, is a Florida resident, who may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

44. Defendant, Leslie G. Taylor, is an Oregon resident who may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

45. Defendant, Left Hand Ditch Company, is a Colorado company which may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

46. Defendant, Lawrence Hittle, is a Colorado resident who may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

47. Defendant, Paul Garfinkle, is a Florida resident who may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

48. Defendants, Claimants of Merendon Mining (Nevada), Inc., who filed secured claims.

49. Defendants, John Doe Nos. 1 through 1,000, the names being fictitious and not presently known to the plaintiff, may assert a lien claims, encumbrance, or other interest in the Bueno and Black Rose Mining Properties.

50. The Defendants are required to prove their respective co-owner interests, and those who fail to do so, are precluded from either (i) thereafter asserting or proving title and/or ownership of the co-owner interest, or (ii) sharing in the receipt of sale proceeds in accordance with the requirements of 11 U.S.C §363(p)(2).

51. The Trustee requests that the Court determine the interests of the Defendants after the sale of the Bueno and Black Rose Mining Properties. The Trustee will hold the amount realized from the sale of the Bueno and Black Rose Mining

Properties in escrow pending a determination by this Court of the relative interests of such property and then make distributions based upon such determination.

52. The Trustee further requests that those Defendants who either assert and/or hold and claim interests in one or more of the Bueno and Black Rose Mining Properties, which interests are liens, encumbrances, security interest, mortgages, tax liens, or judgments or a claim secured by one or more of the foregoing prove the validity, priority, or extent of their Liens and Encumbrances in accordance with the requirements of §363(p)(2).

53. Defendants who fail to prove the validity, priority, or extent of their liens, claims, encumbrances, or interests in the Bueno and Black Rose Mining Properties are precluded from receiving distribution of proceeds from sale or other disposition thereof.

54. Proof of the validity, priority or extent of liens, claims, encumbrances, or interests is necessary to,

- a. ensure that payment to a Defendant upon adjudication of their interests is warranted, proper, in the correct amount, and will discharge their interests,
- b. assure the ultimate purchaser and the title insurance company insuring title, that a Debtor who is a seller of its own interest has paid, discharged or provided adequately for the payment and discharge of all interests,
- c. ensure that marketable, or acceptable, title can be conveyed by Debtors to the ultimate purchaser of the Bueno and Black Rose Mining Properties, free and clear of all liens, claims, encumbrances, and interests, including anyone laying claim to an ownership interest in the Bueno and Black Rose Mining Properties, and



d. assure compliance with the Sale Procedures in the pending Sale Motion.

**COUNT**

**[Declaratory Judgment to Determine Validity, Extent, and Priority of Liens, Claims, Encumbrances, and Interests in the Bueno and Black Rose Mining Properties, Including Anyone Laying Claim to the Estate's Rights and Interests in Such Properties]**

55. Plaintiff reincorporates and realleges the allegations contained in Paragraphs 1 through 128 above as if fully set forth herein.

56. This is an action for equitable and declaratory relief brought pursuant to 7001(2), Fed. R. Civ. P., and 11 U.S.C. §363(p)(2) to determine the validity, extent, and priority of liens, claims, encumbrances, and interests in the Bueno and Black Rose Mining Properties, including anyone laying claim to the estate's rights and interests in such properties.

57. This Court should determine which of Defendants have proven the validity, priority or extent of their respective liens, claims, encumbrances, and interests, including disputed ownership interests, pursuant to 11 U.S.C. §363(p)(2) in order to determine the amount of the distribution they are entitled to receive from the net proceeds from the sale of the Bueno and Black Rose Mining Properties, after costs and expenses of such sale, including all administrative expenses that have enabled the Trustee to recover and sell the Bueno and Black Rose Mining Properties.

58. Each of the Bueno and Black Rose Mining Properties consist of the mining rights and claims in mines, and partition thereof into allocable defined sections is impracticable due to the unique character of such mines, location, relative comparable values thereof, and complex issues involving mining rights. Disparate values of one portion of a particular mine to another portion of a particular mine makes partition

unworkable and impracticable.

**WHEREFORE**, the Trustee requests this Court enter a declaratory judgment that determines the validity, extent, and priority of liens, claims, encumbrances, and interests in the Bueno and Black Rose Mining Properties, including any Defendants laying claim to the estate's rights and interests in such property, awarding the Trustee her attorneys fees and costs expended to prosecute this adversary proceeding, and granting such other, further and different relief as the Court deems just and proper.

Dated: December 16, 2011

Respectfully submitted,

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By: /s/ Ivan J. Reich, Esq.  
Ivan J. Reich, Esq.

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